IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

ST.Rev..No. 410 of 2004

(TA.No.105/1998 of KERALA AGRICULTURAL INCOME TAX APPELLATE TRIBUNAL, ADDL.BENCH, KOTTAYAM (ORDER DATED 24-8-2002)

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REVISION PETITIONER/APPELLANT/REVENUE:

STATE OF KERALA,
REP. BY DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES,
ERNAKULAM.

BY SR.GOVERNMENT PLEADER SRI.MUHAMMAD RAFIQ.

RESPONDENT/RESPONDENT/ASSESSEE:

M/S.ST.ANTONY'S RUBBER ESTATE,
AIYYANATTUPURAYIL,
THYCATTUSSERY P.O.
CHERTHALA.

BY ADV. SRI.V.P.SUKUMAR

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 15/10/2007, ALONG WITH STRV NO. 452 OF 2004 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.Nos.410 & 452 of 2004

Dated, this the 15th day of October, 2007

ORDER

H.L.Dattu, C.J.

These revision petitions would arise under the provisions of the Kerala Agricultural Income Tax Act. The assessment years in question in these revisions are 1991-92 and 1992-93 and the accounting years for the assessment years are 1990-91 and 1991-92.

2. The assessee owns agricultural lands and grows rubber trees. For the aforesaid assessment years he had filed the return of income. The assessing authority being of the opinion that the income so returned is too low when compared to the previous assessment years, had issued a pre-assessment notice to the petitioner asking him to show cause why the returns filed by him should not be rejected and the best judgment assessment should not be passed. The pre-assessment notice issued by the assessing authority is as under:

> "The return of agrl. Income for the accounting years 1990-91 and 1991-92 showing a net income of Rs.19,500-50 and Rs.17,500/- for the respective years were examined with the books of accounts produced. Verification of the return and books of accounts revealed the following:
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> 1. The yield returned for both years are too low to be accepted when the yield is compared to that of the previous years and also considering the plot inspections report. It will be estimated as 31,550 kg. for 1991-92 and 28,550 kg. for 1992-93. "

3. After receipt of the pre-assessment notice, the assessee had filed his detailed reply. In that he had stated as under:

> "The yield of rubber as per account is the actual yield received. Due to natural calamity, disease and old age a large

> number of trees perished. There were only 4000 tapping trees in 43.64 acres including 8 acres sold to Sebastian as on 26.2.96 as evidenced by the Inspection report. In 35.64 acres possessed by the from (firm - sic.) there were only 3000 trees. In 19.14 acres there were only 1790 trees before they were cut and removed in 1992. Likewise there were only 3000 trees in 53 acres given in 1994 for stampliter tapping and felling. So there would not be more than 10000 trees at the most in the whole estate during relevant accounting years under assessment. The yield of 22766.64 and 21936.95 kgs. rubber received from the estate during the relevant accounting years under assessment as per accounts is the maximum yield that can be derived from the estate. The yield of rubber additionally estimated is highly arbitrary and without any basis."

4. Rejecting the objections so filed, the Agricultural Income Tax Officer has passed the best judgment assessment and has quantified the tax liability under the provisions of the Agricultural Income Tax Act.

5. Aggrieved by the said orders passed by the assessing authority, the assessee was before the first appellate authority in Appeal Nos.10 and 11 of 1997. The first appellate authority has granted the relief to the assessee.

6. Aggrieved by the orders so passed by the first appellate authority, the State had carried the matter in appeal before the Agricultural Income Tax Appellate Tribunal in T.A.Nos.105 and 106 of 1998. The Tribunal by its order dated 24th August, 2002 has rejected the appeals filed by the Revenue. While doing so, the Tribunal has concluded as under:

> "5. We have considered the merit of the contentions of both sides and perused the connected records. The only defect pointed out by the assessing authority in the pre-assessment notice for estimating the yield and income from rubber is that the yield returned for both the years are too low to be accepted when the yield is compared to that of the previous years and also considering the plot inspection report. In reply to the pre-assessment notice, the assessee filed objection in detail and one of the Partner Shri.P.H.Paul Tharakan was personally heard. The assessing authority examined the books of accounts again. Along with the objection, the assessee filed copy of an agreement

dtd.2.4.1992 entered into between the assessee and one Pius, Peter and Mani was also filed. On that agreement, it is stipulated that 1790 number of rubber trees in the estate are sold to them by the assessee for an amount of Rs.1,68,000/-. According to the assessing authority the natural presumption that followed is that at least by 1991 the old trees standing in 19.14 acres would have been slaughtered and the assessee had obtained that yield and if that is so the yield returned should have been not the yield that returned. He further observed in the assessment order that no ordinary prudent man would all on a sudden cut and remove the yielding rubber trees without slaughter tapping it. So he arrived at a conclusion that the assessee has got the trees slaughter tapped and the yield from slaughter tapping was not accounted for both the years. It is worth-mentioning that the issue regarding the slaughter tapping was not pointed out to the assessee in the pre-assessment notice. It can be seen that the first appellate authority had pointed out valid and cogent reason to interfere with the order of the assessing authority. According to the first appellate authority it had been stipulated in the agreement dated 2.4.1992 that the purchaser have no right to extract any latex from the trees. Shri.P.H.Paul Tharakan, one of the partners of the assessee-firm had filed Affidavit in his personal capacity and on behalf of the firm that all the rubber trees sold as per the agreement dated 2.4.1992 had not been slaughter tapped either at the time of transfer or before. The assessee had also produced a certificate dated 5.12.1997 obtained from the Village Officer, Kothamangalam in support of the contentions raised in the grounds of appeal before the Appellate Asst. Commissioner. It can be seen that the assessing authority had not established that the assessee had effected slaughter tapping during the years in question. He had only presumed that the assessee had got the trees slaughter tapped and the yield had not been accounted. The assessing authority has no case that the Certificate issued by the Village Officer is a false one. Considering all the above aspects of the case, we are of the view that the common order passed by the Appellate Asst. Commissioner is legal and no interference is called for. Regarding the contentions raised by the Respondent in the cross objections, in respect of disallowance of a portion of expenses, it is seen that the Appellate Asst. Commissioner has granted all allowable expenses. Hence we find no reason to allow any further expense."

7. Aggrieved by the orders passed by the Tribunal, the Revenue is before us in these sales tax revisions.

8. The assessee has income from the rubber trees. For the assessment years 1991-92 and 1992-93, he has filed the return of income showing a net income of Rs.19,500.50 and Rs.17,500/- for the accounting years 1990-91 and 1991-92. The income so returned, according to the assessing authority, is low income when compared to the previous accounting years. Therefore, had issued pre-assessment notice. In reply to the pre-assessment notice, it was the specific case of the assessee that he had cut and removed the rubber trees by entering into an agreement with a third person. The assessing authority has not believed the explanation offered by the assessee.

9. The assessing authority has proceeded to complete the assessments by way of best judgment assessment. That 'judgement' is without any basis. It is true, in a best judgment assessment there could be a little bit of guess work. But that guess work must be reasonably made and not on surmises. In our further opinion even while doing the guess work, the assessing authority is expected to follow certain principles. The best judgment assessment cannot be on mere whims and fancies of the assessing authority. In the instant case, it is the specific case of the assessee that rubber trees during the relevant assessment years had been destroyed because of various reasons and further explanation is that part of the trees in large extent of land had been sold as they were very old. This explanation of the assessee filed in reply to the pre-assessment notice, though noticed by the assessing authority, the same is rejected without assigning any reasons, whatsoever. Keeping all these aspects of the matter in view, the first appellate authority as well as the Tribunal have set aside the orders passed by the assessing authority and directed the

assessing authority to accept the return of income filed by the assessee and then quantify the tax liability under the provisions of the Agricultural Income Tax Act. In our opinion, the findings and conclusions reached by the Tribunal cannot be said either arbitrary or capricious. Further, it cannot be said that the Tribunal has failed to decide or decided a question of law erroneously. In that view of the matter the revision petitions filed by the Revenue require to be rejected and they are accordingly rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/DK.